

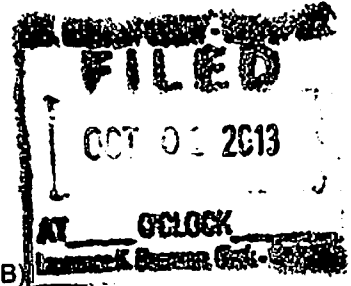
UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
 (Briefly describe the property to be searched
 or identify the person by name and address)

the person of Antwon McMullen

Case No. 13-mj-478(ATB)



APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

Antwon McMullen, being a black male, with a date of birth of 08/02/1982 and a Social Security number of 103-66-9331 located in the Northern District of New York, there is now concealed (identify the person or describe the property to be seized):

DNA (Deoxyribonucleic Acid) in the form of saliva and cells of Antwon McMullen to be recovered by use of a buccal swab of the inside of the mouth

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
 18 U.S.C. § 924(c); and 21
 U.S.C. § 841(a)(1) & (b)(1)(B)

Offense Description
 Guns, and controlled substance

The application is based on these facts:

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Erin Silk, Special Agent, Bureau of ATF
 Printed name and title

Sworn to before me and signed in my presence.

Date: 10/01/2013

City and state: Syracuse, New York

Judge's signature

Hon. Andrew T. Baxter, U.S. Magistrate Judge
 Printed name and title

Affidavit in Support of a Search Warrant

Introduction

1. I, Erin Silk, being duly sworn, depose that I am a Special Agent employed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I have been employed by ATF since January 2009 as an Industry Operations Investigator and since October 2009 as a Special Agent. I am currently assigned to the ATF Field Office in Syracuse, New York. I am a graduate of the twelve week Criminal Investigator Training Program and the ATF National Academy's fourteen week Special Agent Basic Training program at the Federal Law Enforcement Training Center in Glynco, Georgia. I have also completed the twelve week Wisconsin basic police recruit academy.
2. As part of my training to become an ATF Special Agent, I received over 300 hours of instruction in matters such as firearms and controlled substances identification, trafficking, and interdiction; confidential informant management and undercover techniques, asset identification, seizure and forfeiture. I have participated in investigations regarding illicit firearms trafficking and unlawful drug distribution. During the course of these investigations I have conducted or participated in surveillances, the execution of search warrants, debriefings of informants and cooperating witnesses, and reviews and analysis of a wide variety of documents and records. Through my training, education and experience I have become familiar with some of the ways by which illegal drugs are distributed, some of the methods of payment for such drugs, and some of the methods that are used to disguise the source and nature of the profits made by narcotics dealers.

3. The information included herein is based upon my personal participation in this investigation as well as my review of documents from the Syracuse Police Department. Since this affidavit is submitted for the limited purposes of providing probable cause for the filing of a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth herein only the facts which I believe necessary to support this application.
4. This affidavit is submitted in support of a search warrant to obtain a DNA sample from Antwon McMullen. Antwon McMullen was arrested on a complaint sworn out before Judge Baxter on July 24, 2013, for possession with intent to distribute Crack Cocaine, a Schedule II controlled substance in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(B) and for possessing a firearm in relation with the aforementioned drug trafficking crime, in violation of Title 18, United States Code, Section 924(c).

The Investigation – Possession of Firearm by Antwon McMullen in Relation with Possession with Intent to Distribute Crack Cocaine

5. In mid to late April 2013, an investigation was initiated into the suspected criminal activities of Antwon McMullen by the Syracuse Police Department (SPD). This investigation began after SPD Detective Jeffrey Ballagh received information from a Confidential and Reliable Informant (hereinafter referred to as the "CRI") that "Piff" distributes crack cocaine in the Syracuse, NY area. The CRI positively identified "Piff" as being Antwon McMullen through a photograph shown to him/her by SPD. The particular CRI used in this SPD investigation has been responsible for several felony and misdemeanor arrests and has aided in obtaining more than six search warrants.

6. Between approximately the fourth week of April 2013 and approximately the second week of July 2013, the CRI, under the control and direction of SPD, made approximately eight controlled purchases of crack cocaine from Antwon McMullen. The CRI was searched for contraband, currency and illegal items before and after each controlled purchase or in-person contact with Antwon McMullen. SPD officers maintained visual surveillance of the CRI during each controlled purchase and contact with Antwon McMullen.
7. Immediately before, during and/or after the controlled purchases of crack cocaine, SPD officers conducted surveillance on Antwon McMullen. SPD Officers observed Antwon McMullen drive four different vehicles to and from the controlled purchases with the CRI over the course of the investigation between the fourth week of April 2013 and the second week of July 2013. Specifically, during a controlled purchase of crack cocaine with the CRI conducted during the second week of July 2013, SPD Officers observed Antwon McMullen operate a red 2006 Nissan Altima bearing New York State Registration GGV-6458.
8. SPD officers also observed Antwon McMullen leave or arrive at two different residences during the course of the investigation, either directly after or before the controlled crack cocaine purchases with the CRI. Specifically, during the second week of July 2013, SPD officers observed Antwon McMullen arrive at 177 Kuhl Avenue, Syracuse, NY after a controlled purchase of crack cocaine with the CRI. On July 11, 2013, SPD surveillance units observed Antwon McMullen enter the first floor apartment at 177 Kuhl Avenue, Syracuse, NY with a key.

9. On July 11, 2013, SPD Det. Ballagh submitted search warrant applications for Antwon McMullen's person and clothing, for the red 2006 Nissan Altima bearing New York State (NYS) Registration GGV-6458, and for three other vehicles and one residence in which Antwon McMullen was observed operating, exiting and/or entering before and/or after controlled purchases. On July 11, 2013, the Honorable City Court Judge Rory McMahon signed these search warrants.
10. On July 11, 2013, SPD conducted a high risk vehicle stop of Antwon McMullen operating the red 2006 Nissan Altima bearing NYS registration GGV-6458 at the intersection of James Street and Ashdale Avenue in Syracuse.
11. Antwon McMullen was taken into custody and waived his Miranda warnings given to him by Det. Ballagh. Antwon McMullen agreed to speak with Det. Ballagh and an interview ensued. Det. Ballagh asked Antwon McMullen if he had recently moved to 177 Kuhl Avenue, and Antwon McMullen stated, "you can't go there without a warrant." Over the course of the interview Antwon McMullen stated to Det. Ballagh, "there is two ounces in the back room and a gun in the closet, but it's not mine." Antwon McMullen also told Det. Ballagh that Antwon McMullen had a key on his key chain for 177 Kuhl Avenue.
12. After Det. Ballagh's interview with Antwon McMullen, Det. Ballagh applied for a search warrant of the first floor apartment at 177 Kuhl Avenue, Syracuse, NY. The search warrant for this residence was signed by Honorable City Court Judge Rory McMahon during the evening of July 11, 2013. While the search warrant was being drafted and signed, members of the SPD secured and held the residence at 177 Kuhl Avenue, Syracuse, NY so no evidence could be tampered with or destroyed.

13. On July 11, 2013, SPD executed the search warrant of the first floor of 177 Kuhl Avenue, Syracuse, NY. Entry to the residence was made with the key located on Antwon McMullen's key chain.
14. Several items were located and seized as evidence from the residence, including but not limited to: mail in Antwon McMullen's name located in the kitchen, approximately 56.6 grams of beige chunky substance, which field tested positive for the presence of cocaine, contained in two separate bags within one larger zip lock bag located in a cabinet drawer off the back of the kitchen, \$410.00 in U.S. Currency in a white envelope located above a cabinet in the kitchen, a box of sandwich bags located on the kitchen counter, mail in Antwon McMullen's name located in Antwon McMullen's bedroom, \$1017.00 U.S. Currency located in Antwon McMullen's bedroom, a Colt, Model Woodsman, .22 caliber semi-automatic pistol, with an obliterated serial number loaded with two live .22 caliber rounds located in Antwon McMullen's bedroom closet under a shelf, zip lock bag containing green brown plant like material in Antwon McMullen's bedroom, a black digital scale located in the rear bedroom.
15. The search of 177 Kuhl Avenue did not result in the location or seizure of any items that would suggest Antwon McMullen was a user of crack cocaine.
16. Also on July 11, 2013, SPD executed the search warrant of the red 2006 Nissan Altima bearing NYS registration GGV-6458. Several items were located and seized as evidence from this vehicle, including but not limited to: approximately 8.7 grams of beige chunky substance, which field tested positive for the presence of cocaine, contained in a section of knotted clear plastic located in the driver's side door map pocket, a section of clear plastic containing a green/brown plant like material located in the driver's side door map

pocket, mail in the name of Antwon McMullen located in the trunk, and a black and silver digital scale located in the rear seat.

17. SPD also executed the search warrant of the person and clothing of Antwon McMullen which resulted in the location and seizure of \$605.00 U.S. Currency from Antwon McMullen's left front pants pocket and a plastic bag containing a green/brown plant like material from Antwon McMullen's right front pants pocket.
18. On July 11, 2013, SPD Detective David Metz and Sergeant Michael Hartnett interviewed Antwon McMullen. During the course of the interview, Antwon McMullen stated that he possessed no valid form of employment and he was involved in the sale of illegal drugs to "make money." Antwon McMullen also correctly told Det. Metz where crack cocaine and the Colt, Model Woodsman, .22 caliber pistol would be located in 177 Kuhl Avenue. Additionally, per Det. Metz "McMullen stated that he had been jumped a few nights prior to the execution of the search warrant and he needed the above listed weapon for protection. McMullen also said that he has had prior disputes with known drug dealers in the City of Syracuse that have wanted to harm him in one fashion or another. This furthered McMullen's need to possess the weapon for his personal protection, the protection of his narcotic supply and associated currency."
19. On August 16, 2013, Marie Guido, a forensic scientist, with the Wallie Howard, Jr. Center for Forensic Sciences analyzed the Colt, Model Woodsman, .22 caliber pistol that was recovered from 177 Kuhl Avenue. Guido's report indicates that "the DNA profile obtained from the handgun is indicative of a mixture of at least four contributors. The mixture profile representing the three highest contributors of the DNA profile obtained

from the handgun is suitable for inclusionary purposes.” In laymen’s terms this means that 3 profiles recovered from the handgun are suitable for a DNA comparison.

Conclusion

20. We respectfully request that a search warrant be issued to obtain DNA samples from Antwon McMullen so it can be determined if his DNA matches any of the DNA recovered from the Colt, Model Woodsman, .22 caliber pistol that was recovered from 177 Kuhl Avenue. The contemplated DNA search is minimally invasive as it necessitates only a simple cotton swab (buccal swab) of saliva obtained from the inside of the mouth. The DNA sample will be obtained by personnel who are well experienced in such matters. After collection, the sample will be turned over by me to DNA specialists at the Wally Howard Center for Forensic Sciences in Syracuse for analysis and comparison to the DNA samples that were found on the handgun.



Erin Silk, Special Agent
Bureau of Alcohol, Tobacco,
Firearms and Explosives

Sworn to before me this 1st day
of October, 2013.



Hon. Andrew T. Baxter
United States Magistrate Judge